

Message Text

UNCLASSIFIED

PAGE 01 STATE 010343
ORIGIN L-03

INFO OCT-01 ARA-14 ISO-00 /018 R

DRAFTED BY L/M:HSBURMAN:CEK
APPROVED BY L/M:HFSHAMWELL,JR.
ARA/MGT:JSIMMONS (PHONE)
-----014049 140718Z /15

R 132308Z JAN 78
FM SECSTATE WASHDC
TO AMEMBASSY BRASILIA

UNCLAS STATE 010343

E.O. 11652: N/A

TAGS: AFSP, ACLM

SUBJECT: CLAIMS OF L.A. BAILEY

REF: A) BRASILIA 7589, B) BRASILIA 6471

1) DEPARTMENT OM REPLY REF A APPARENTLY MISROUTED; SUB-
STANCE REPEATED BELOW.

2) EMBASSY REQUESTED NEGOTIATE SETTLEMENT AS FOLLOWS:

A) PREVIOUS DEPARTMENT REVIEW OF BAILEY CLAIM ON BASIS
U.S. LAW INDICATED PROBABILITY SUSPENSION OF CONTRACT BY
EMBASSY WOULD BE UPHOLD BASED ON ACTUAL PRIOR KNOWLEDGE
CONTRACTOR OF PLANNED CLOSURE OF EMBASSY SPACE FOR CON-
STRUCTION PURPOSES. SINCE CONTRACT DOCUMENTS AVAILABLE
TO DEPT. DO NOT CONTAIN TERMINATION FOR GOVERNMENT CON-
VENIENCE CLAUSE, TERMINATION MUST BE BASED ON DEFAULT.
DEFAULT MIGHT BE ABLE TO BE SUSTAINED ON FAILURE TO COMPLY
WITH SECURITY RULES, IF THAT IS PROVEABLE ON RECORD. DEFAULT
OTHERWISE WOULD HAVE TO BE SUSTAINED ON FAILURE TO PERFORM,
UNCLASSIFIED

UNCLASSIFIED

PAGE 02 STATE 010343

WHICH IS CLOUDY ISSUE BECAUSE EMBASSY IS VULNERABLE IN
ANY EVENT TO BREACH OF CONTRACT CLAIM DURING PERIOD OF
PERFORMANCE BASED ON FAILURE OF EMBASSY COMPLY WITH CON-
TRACT MAINTENANCE OF EQUIPMENT CLAUSES.

B) EMBASSY SHOULD APPORTION ALLEGED EXPENSES/LOSSES
(PARA 1 REF A) AND OFFER SETTLEMENT BASED ON PAYMENT

REASONABLE VALUE BREACH OF CONTRACT CLAIM, WITH REASONABLE EXPENSES RELATING TO WIND UP COSTS. CONTRACT SETTLEMENT SHOULD NOT BE ARRIVED AT BY ARBITRARILY SELECTING PERCENTAGE OF CONTRACTOR'S CLAIM (PARA 3 REF A) OR BY USING USG OFFER

AS BASIS UNLESS EITHER IS ARRIVED AT THROUGH PROPER APPORTIONMENT OF COSTS.

3) IF SETTLEMENT ON THIS BASIS NOT ABLE TO BE NEGOTIATED, EMBASSY SHOULD REQUEST DETAILED WRITTEN LEGAL OPINION FROM LAW FIRM AS TO MERITS OF CONTRACTOR'S CLAIM AND EMBASSY DEFENSES ASSUMING LITIGATION UNDER BRAZILIAN LAW WITHOUT REPEAT WITHOUT REGARD POSSIBLE IMMUNITY. PARA 3 REF B PROBABLY IN ERROR TO EXTENT CLAIM OF SOVEREIGN IMMUNITY

INVOLVED. WE DO NOT CONSIDER RESOLUTION THIS CLAIM TO BE MATTER OF POLITICAL SENSITIVITY AND IN FACT PLEA OF IMMUNITY TO AVOID COURT JURISDICTION WOULD PROBABLY NOT REPEAT NOT BE AUTHORIZED. VANCE

UNCLASSIFIED

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 13 jan 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978STATE010343
Document Source: CORE
Document Unique ID: 00
Drafter: HSBURMAN:CEK
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780021-0985
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780164/aaaaccan.tel
Line Count: 81
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: c51cfce3-c288-dd11-92da-001cc4696bcc
Office: ORIGIN L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 77 BRASILIA 7589, 77 BRASILIA 6471
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 22 feb 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3775937
Secure: OPEN
Status: NATIVE
Subject: CLAIMS OF L.A. BAILEY
TAGS: AFSP, ACLM
To: BRASILIA
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/c51cfce3-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014